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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/009,383	03/04/2002	Maria Laura Gennaro	07763-043001	7070

26211 7590 11/17/2005  
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EXAMINER

SWARTZ, RODNEY P

ART UNIT PAPER NUMBER

1645

DATE MAILED: 11/17/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Advisory Action</b> <b>Before the Filing of an Appeal Brief</b>	Application No. 10/009,383	Applicant(s) GENNARO, MARIA LAURA	
	Examiner Rodney P. Swartz, Ph.D.	Art Unit 1645	

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 24 January 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:
- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
- Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### NOTICE OF APPEAL

2. ☒ The Notice of Appeal was filed on 23 August 2004. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

#### AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ They raise the issue of new matter (see NOTE below);
- (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.
- NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☒ Applicant's reply has overcome the following rejection(s): none, see attached Detailed Action.
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
- The status of the claim(s) is (or will be) as follows:
- Claim(s) allowed: \_\_\_\_\_.
- Claim(s) objected to: \_\_\_\_\_.
- Claim(s) rejected: 1-18,35-54.
- Claim(s) withdrawn from consideration: \_\_\_\_\_.

#### AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

#### REQUEST FOR RECONSIDERATION/OTHER

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: \_\_\_\_\_.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). \_\_\_\_\_
13. ☐ Other: \_\_\_\_\_.

Art Unit: 1645

### DETAILED ACTION

1. Applicant's Response to Advisory Action, received 24 January 2005, is acknowledged.

Claims 1, 11, and 35 have been amended.

2. Claims 1-18 and 35-54 are pending and under consideration.

### Rejections Maintained

3. The rejection of claims 1-18 and 35 under 35 U.S.C. 112, first paragraph, scope of enablement for polypeptides other than MTBN4, is maintained for reasons of record.

Applicant argues that in view of the data in the specification and the knowledge and skill of those in the art, such artisans would believe it likely that these additional polypeptides would, like MTBN4, have *M. tuberculosis* specific antigenic properties. Applicant indicates that the specificity analysis described in Brusasca et al (*Scand. J. Immunol.*, 54:448-452, 2001) support applicant's argument, i.e., subjects infected with *M. tuberculosis* contain antibodies that bind MTBN1, MTBN2, MTBN4, MTBN7, and ESAT-6. However, subjects infected with other *Mycobacteria* as well as "normal" subjects had no antibodies to these polypeptides.

The examiner has considered applicant's arguments, but does not find them persuasive. Brusasca et al, Table 1, assessed the antibody responses to RD1 antigens in 3 groups of human subjects. Group 1, 75 patients, had active pulmonary TB. Group 2, 16 patients, had nonidentified non-TB mycobacterioses. Group 3, 50 controls, were healthy. It is difficult to determine whether the listed RD1 antigens are specific for *M. tuberculosis* because the identity of the MOTT bacteria are not identified. For instance, are the MOTT patients all infected with **only one** mycobacteria or with 16 different mycobacteria? At the present time, the specificity issue remains in question. Thus, while one of skill in the art may believe that some specificity may exist, the data in the instant specification and that in Bruscasca et al do not support the

Art Unit: 1645

scope of the instant claims. In addition, the embodiment in the claims of "a second amino acid sequence identical to said first amino acid sequence but with conservative substitutions" has lacks support for indicating which substitutions are allowable without removal of applicant's claim of *M. tuberculosis* specificity.

4. The rejection of claims 36-54 under 35 U.S.C. 112, second paragraph, indefiniteness, is maintained for reasons of record.

### **Conclusion**

5. No claims are allowed.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rodney P. Swartz, Ph.D., Art Unit 1645, whose telephone number is (571) 272-0865. The examiner can normally be reached on Monday through Thursday from 5:30 AM to 4:00 PM EST.

If attempts to reach the Examiner by telephone are unsuccessful, the examiner's supervisor, Lynette F. Smith, can be reached on (571)272-0864.

The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Application/Control Number: 10/009,383

Art Unit: 1645

Page 4

A handwritten signature in black ink, appearing to read "Rodney P. Swartz". The signature is fluid and cursive, with a long horizontal stroke at the end.

RODNEY P. SWARTZ, PH.D  
PRIMARY EXAMINER  
Art Unit 1645

November 15, 2005